

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Revision No.115 of 2007.

Judgement reserved on: 7.11.2007

Date of decision: 8.11.2007.

Sunita Chaudhary

.....Petitioner

Vs.

Sandeep Grover

.... Respondent.

Coram

The Hon'ble Mr. Justice Kuldeep Singh, Judge.

Whether approved for reporting? Yes

For the petitioner : Mr. J.L. Bhardwaj, Advocate.

For the Respondent : Mr. Harsh Khanna, Advocate.

Kuldeep Singh, Judge.

The complainant is in revision against the order dated 21.8.2007 passed by learned Sessions Judge, Shimla in Cr.Rev. Petition No.21-S/10 of 2007 setting aside order dated 27.6.2005 of learned Judicial Magistrate Ist Class, Court No.3, Shimla in Complaint No.205/3 of 2005 and quashing all other subsequent proceedings in complaint No.205/3 of 2005.

2. The facts in brief as emerge from the complaint are that Smt. Sunita Chaudhary petitioner filed a complaint against respondent Sandeep Grover under Section 138 of the Negotiable Instruments Act, 1881 on account of bouncing of cheque dated

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

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13.12.2004 of Rs.1,00,000/- issued by respondent in favour of the petitioner.

3. It has been alleged in the complaint that respondent had requested the petitioner to advance a loan of Rs.1,00,000/- which she advanced to him in June, 2001, he told the petitioner that the amount would be refunded to her within one year, but respondent did not make any payment of the loan to the petitioner, rather after one year in the month of July, 2002 he issued a post dated cheque dated 13.12.2002 for a sum of Rs.1,00,000/- in favour of the petitioner. At the time of issuing the cheque the respondent had assured the petitioner that the said cheque would be honoured as and when presented to the banker of the respondent. In the first week of December, 2002 the respondent came to the petitioner and requested her not to present the cheque on the ground that respondent has no sufficient funds in his account to honour the said cheque. The petitioner had very good relations with the respondent, she acceded to his request and upon which, respondent had changed the date on the cheque from 13.12.2002 to 13.12.2004.

4. The cheque was presented by the petitioner for encashment through her banker i.e. State Bank of Patiala, The Mall Shimla on 29.12.2004, but on presentation, the cheque was returned by the banker of the respondent i.e. Syndicate Bank, The Mall Shimla to the banker of the petitioner vide memo dated 30.12.2004 with remarks 'Account is closed'. The petitioner received the information of not honouring the cheque on 8.1.2005 through registered letter of

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her banker along with cheque returning memo dated 5.1.2005. The petitioner on receiving the intimation of non-encashment of the cheque got issued notice dated 29.1.2005 to respondent but respondent did not make payment of Rs. 1,00,000/- to the petitioner. On these grounds the petitioner filed the complaint under Section 138 of the Act against the respondent.

5. The petitioner led preliminary evidence by way of her own affidavit dated 28.3.2005. The learned Judicial Magistrate issued process to the respondent on 27.6.2005 under Section 138 of the Act. The order dated 27.6.2005 was assailed by respondent by way of Cr. Rev. Petition No.21-S/10 of 2007 which has been allowed by the learned Sessions Judge, Shimla vide impugned order, hence this revision.

6. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the petitioner has submitted that learned Sessions Judge has erred in returning the finding that overwriting in the original cheque dated 13.12.2002 has been tampered by the petitioner herself so as to bring the cheque within time. He has submitted that there is nothing on record to support this finding of the learned Sessions Judge. The learned counsel for the respondent has supported the impugned order.

7. The petitioner in the complaint has stated that respondent himself changed the date on the cheque from 13.12.2002 to 13.12.2004. She has narrated the facts in the complaint under what circumstances the cheque dated 13.12.2002 was changed to

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13.12.2004 by the respondent. The explanation given by her for changing the date from 13.12.2002 to 13.12.2004 on the cheque by the respondent will be tested during the trial of the case. The learned counsel for the petitioner has relied **VEERA EXPORTS v. T.KALAVATHY (2002) 1 Supreme Court Cases 97** wherein the Supreme Court has held that a change of date is a material alteration which affected the interests of the respondent and this fact will have to be established on evidence during trial. The High Court could not have quashed the complaint merely on the basis of an assertion in the reply. The **Veera Exports** case (supra) is fully applicable in the facts and circumstances of the present case. In the present case also the change of date is to be ascertained during the trial and it is to be seen whether the change of date on the cheque was made by the petitioner or the respondent. The revision petition is accordingly allowed. The order dated 21.8.2007 passed by learned Sessions Judge, Shimla in Cr. Rev. Petition No.21-S/10 of 2007 is set aside. The parties through their counsel are directed to appear before the learned Judicial Magistrate Ist Class, Court No.3, Shimla on 22.11.2007.

(Kuldip Singh)
Judge.

November 8, 2007
(sks)